THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2018-001165 and 2018-002117

Commission Docket No. 2018-2-E

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, Appellants,

v.

South Carolina Electric & Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, LLC, Southern Current, LLC and South Carolina Office of Regulatory Staff, Respondents;

and

South Carolina Solar Business Alliance, LLC, Appellant,

v.

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, South Carolina Electric and Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, Southern Current, LLC, and South Carolina Office of Regulatory Staff,

Of whom South Carolina Electric & Gas and South Carolina Office of Regulatory Staff, are Respondents.

FINAL REPLY BRIEF OF APPELLANTS SOUTH CAROLINA COASTAL CONSERVATION LEAGUE AND SOUTHERN ALLIANCE FOR CLEAN ENERGY

J. Blanding Holman IV
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
(843) 720-5270

Attorney for South Carolina Coastal Conservation League and Southern Alliance for Clean Energy

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

INTRODUCTION.....1

ARGUMENT.....3

I. The Commission Erred in Placing the Burden of Persuasion on Intervenors Challenging a Utility's Avoided Cost Rates.....3

II. Intervenors Provided More Than Sufficient Evidence To Raise the Specter of Imprudence.....9

III. The Commission's Decision Was Not Supported By Substantial Evidence.....13

A. The Commission's Approval of SCE&G's Avoided Capacity Rate Was Not Supported By Substantial Evidence, But Was Instead Based on an Illusory Rationale.....13

B. Conservation Groups Do Not Ask the Court to Serve as Trier of Fact, But Rather to Reverse and Remand Commission Action That Was Not Supported By Substantial Evidence and Lacked Necessary Findings of Fact.....15

IV. The Commission's Decision to Approve SCE&G's Proposed Zero Avoided Capacity Value Violated Federal Law.....16

V. Conservation Groups Sufficiently Preserved Commission's Findings of Fact for Appellate Review.....20

CONCLUSION.....20

TABLE OF AUTHORITIES

Page(s)

Cases

Able Communications, Inc. v. South Carolina Public Service Commission, 290 S.C. 409, 351 S.E.2d 151 (1986) 17

August Kohn & Co. v. South Carolina Public Service Commission, 281 S.C. 28, 313 S.E.2d 630 (1984) 8

CarMax Auto Superstores West Coast, Inc. v. South Carolina Department of Revenue, 411 S.C. 79, 767 S.E.2d 195 (2014) 7, 8

Hamm v. South Carolina Public Service Commission, 309 S.C. 282, 422 S.E.2d 110 (1992) ..... *passim*

Hamm v. South Carolina Public Service Commission and Carolina Power & Light Co., 291 S.C. 119, 352 S.E.2d 476 (1987) 5

Heater of Seabrook, Inc. v. Public Service Commission of South Carolina, 324 S.C. 56, 478 S.E.2d 826 (1996) 14

Hilton Head Plantation Utilities, Inc. v. Public Service Commission of South Carolina, 312 S.C. 448, 441 S.E.2d 321 (1994) 14

Industrial Cogenerators v. Federal Energy Regulatory Commission, 47 F.3d 1231 (D.C. Cir. 1995) 2

Kamine/Besicorp Allegany L.P. v. Rochester Gas & Electric Corp., 908 F. Supp. 1180 (W.D.N.Y. 1995) 2

Leventis v. South Carolina Department of Health & Environmental Control, 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000) 4

New York Telephone Co. v. Public Service Commission, 190 A.D.2d 217, 597 N.Y.S.2d 760 (1993) 10

In re Ownership of Renewable Energy Certificates, 389 N.J. Super. 481, 913 A.2d 825 (N.J. Super. Ct. App. Div. 2007) 2

Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E.2d 328 (1998) 14, 15, 16, 17

State ex rel. Sandel v. New Mexico Public Utilities Commission, 980 P.2d 55 (N.M. 1999) 2

South Carolina Cable Television Association v. Southern Bell Telephone & Telegraph Co.,
308 S.C. 216, 417 S.E.2d 586 (1992) 8, 9

State v. Russell,
345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001) 20

In Re Utilities Services of South Carolina, Inc.,
Docket No. 2007-286-WS, Order No. 2009-353, 2009 WL 2987189 (May 29, 2009) 5

Utilities Servs. of South Carolina, Inc. v. South Carolina Office of Regulatory Staff,
392 S.C. 96, 708 S.E.2d 755 (2011) 5

Statutes

16 U.S.C. § 824a-3 ..... 6, 19

S.C. Code Ann. § 1-23-380(5) 13, 15

S.C. Code Ann. § 12-6-2320(A) 8

S.C. Code Ann. § 58-27-810 4

S.C. Code Ann. § 58-27-865 ..... 4, 6

Other Authorities

18 C.F.R. § 292.101(b)(6) 16

18 C.F.R. § 292.303(a) 16

18 C.F.R. § 292.304(a)(1) 19

18 C.F.R. § 292.304(e)(2) 19

Adam Smith, *Wealth of Nations* (Amherst, New York: Prometheus Books, 1991) 1

FERC Order 69, 45 Fed. Reg. 12,214 (Feb. 25, 1980) 17, 18

Jeffrey D. Watkiss & Douglas W. Smith, *The Energy Policy Act of 1992—A Watershed for Competition in the Wholesale Power Market*, 10 Yale J. on Reg. 447, 453-454 (1993) 2

Made, Merriam Webster Dictionary https://www.merriam-webster.com/dictionary/made 4

Steven R. Miles, *Full-Avoided Cost Pricing Under the Public Utility Regulatory Policies Act: "Just and Reasonable" to Electric Consumers?*, 69 Cornell L. Rev. 1267 (1984) 2, 17

William J. Baumol, *Quasi-Permanence of Price Reductions: A Policy for Prevention of Predatory Pricing*, 89 Yale L.J. 1 (1979) 1

INTRODUCTION

> To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow-citizens.
>
> - Adam Smith, *Wealth of Nations*, 219-20 (Amherst, New York: Prometheus Books, 1991).

Competitive markets act to lower prices.

That axiom is widely understood, but it will be denied, invariably, by one party: the monopoly, which Smith wrote will "irresistibly oppose" competition. *Id.* So it is here. For years, South Carolina Electric & Gas ("SCE&G" or "the Company") has exercised monopoly power to charge its South Carolina residential customers some of the highest electric bills in the entire nation. Now, faced with the prospect of competition, it has erected barriers to market entry under the flag of consumer protection.

The flag is false: the positions set forth in SCE&G's brief protect the monopoly by artificially and unlawfully blocking competition from independent renewable power. SCE&G's chosen device is predatory pricing, whereby a monopoly sets artificially *low* prices that prevent competitors from gaining market entry. The predatory pricing here is made all the more objectionable because SCE&G, notwithstanding its "low" avoided cost rate, continues charge captive customers much *higher* rates.[1]

As discussed in our opening brief, SCE&G's scheme, and the Public Service Commission's Order embracing it, violate state and federal law, including the Public Utility Regulatory Policies Act ("PURPA"), which prohibits discriminatory behavior by incumbent monopoly utilities that are otherwise incentivized to maximize profits through building their own

[1] *See* William J. Baumol, *Quasi-Permanence of Price Reductions: A Policy for Prevention of Predatory Pricing*, 89 Yale L.J. 1 (1979) (proposing that firms that use artificially low predatory prices to defeat competition be bound by those prices).

electricity generating resources rather than purchasing independently produced renewable energy. *See Indus. Cogenerators v. Fed. Energy Regulatory Comm'n*, 47 F.3d 1231, 1232 (D.C. Cir. 1995) ("PURPA was enacted, in part, to address discrimination by electric utilities in the availability and price of power that they sell to and buy from cogeneration facilities for resale.").

PURPA requires the prices set for independently produced power to be equal to the costs that utilities would otherwise incur to generate the same amount of power, otherwise known as the utilities' "avoided costs." If the avoided cost rate is set accurately, ratepayers will be neutral as to whether the energy acquired was generated by utility-owned assets or independent power providers. Aside from clearing the way for renewable energy, the law benefits consumers through operation of Smith's invisible hand—increased competition.[2]

---

[2] SCE&G's attempt to deny PURPA's competitive benefits, SCE&G Response Brief at p. 37 n.25, is as unsurprising as it is wrong. Courts across the country have recognized PURPA's role in bringing new energy producers to market to compete with monopolies. *See Kamine/Besicorp Allegany L.P. v. Rochester Gas & Elec. Corp.*, 908 F. Supp. 1180, 1192 (W.D.N.Y. 1995) (recognizing "the ultimate effect of PURPA is to introduce new energy producers into the marketplace" and affirming the Federal Energy Regulatory Commission's view that PURPA "tends to broaden the energy market as a whole" and that if "traditional utilities were successful in excluding [qualifying facilities ("QFs")], then, the long-range effect could be to reduce competition.") (internal citations omitted); *In re Ownership of Renewable Energy Certificates*, 389 N.J. Super. 481, 486, 913 A.2d 825, 828 (N.J. Super. Ct. App. Div. 2007) ("Congress enacted the Public Utility Regulatory Policies Act of 1978 . . . to increase competition in the production of electricity and reliance on renewable energy."); *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 980 P.2d 55, 58 (N.M. 1999) ("Congress introduced competition into the generation component of the electric power industry by enacting the Public Utility Regulatory Policies Act of 1978."); Jeffrey D. Watkiss & Douglas W. Smith, *The Energy Policy Act of 1992—A Watershed for Competition in the Wholesale Power Market*, 10 Yale J. on Reg. 447, 453-454 (1993) ("PURPA spawned new non-utility competitors in the power generation industry. Before PURPA, a non-utility generator was faced with trying to sell power to the local utility, a disinterested monopsony. . . . PURPA gave QFs leverage. PURPA required the local utility to buy power from QFs and to do so at a fair price. . . . QFs have proved to be aggressive competitors; in recent years, they have accounted for more than half of new generation capacity brought on line in the United States."); Steven R. Miles, *Full-Avoided Cost Pricing Under the Public Utility Regulatory Policies Act: "Just and Reasonable" to Electric Consumers?*, 69 Cornell L. Rev. 1267, 1285, 1268 n.11 (1984) (noting that "rates based on the economic value of the energy produced create 'equality of opportunity' to compete," and quoting Senator statements during debates over PURPA, which demonstrate that Congress was aware that some

The entity charged with administering PURPA in South Carolina—the Public Service Commission—instead embraced SCE&G's erroneous theories to give competition the back of the hand. Our opening brief showed that the Commission's Order suffers from several fundamental and unlawful flaws and should be reversed. SCE&G's brief largely repeats the arguments that it fed to the Commission and fails to remedy the glaring errors below. This Court should reverse the decision below, vacate the Commission's Order, and remand this case for proper lawful determination of avoided cost rates that will allow for the competition that PURPA requires.

ARGUMENT

I. The Commission Erred in Placing the Burden of Persuasion on Intervenors Challenging a Utility's Avoided Cost Rates.

SCE&G glosses over a central issue identified by the Appellant Conservation Groups and Solar Business Alliance in this appeal: the Public Service Commission committed legal error when it approved SCE&G's 2018 avoided capacity rate on the grounds that other parties failed to provide what it considered to be a "viable alternative proposal." (R. p. 152; Order No. 2018-322(A), p. 15).[3] As shown in our brief, the Commission got it exactly backwards and erred by

---

utilities have "historically refused" to permit QFs to generate within their service areas, and were therefore "uneasy about this new source of competition;" Senators noted that PURPA was needed because these utilities would otherwise be "unwilling to interconnect.") (internal citations omitted); (R. p. 1366, lines 2-3; Tr. Vol. II, p. 736 (Witness Johnson - "PURPA is one of [the] cases where government policy makers decided to allow competitive risk taking and innovation, while continuing to regulate remaining parts of the industry.")).

[3] The Commission relied on the belief that they, ". . . were not presented with a viable avoided capacity cost factor by any party except SCE&G. The other parties took great pains to explain how they believe SCE&G inappropriately derived its factor, but the parties failed to present an alternative for us to consider." (R. pp. 204-05; April 25, 2018 Directive Order), *see also* (R. p. 152; p. 153; Order No. 2018-322(A), p. 15 (reiterating that it made its decision because "no other party presented an alternative estimate of SCE&G's avoided capacity costs."); *id.* at p. 16 ("In fuel proceedings before this Commission, mere assertions that fail to offer and justify an alternative just and reasonable rate are of limited value in the final determination of a final just,

not finding SCE&G's proposal was unjust and unreasonable.

All parties agree that SCE&G bears a burden of persuasion to prove that its avoided cost rates are just and reasonable. *See* SCE&G Response at 16 ("SCE&G had the burden to persuade the PSC that its proposal . . . was just, reasonable, and appropriate."). This requirement reflects the "general rule in administrative proceedings is that an applicant for relief, benefits, or a privilege has the burden of proof." *Leventis v. S.C. Dep't of Health & Envtl. Control*, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) (internal citation omitted).[4] It also follows from S.C. Code Ann. § 58-27-810, which requires that "[e]very rate made, demanded or received by any electrical utility . . . shall be just and reasonable,"[5] and § 58-27-865(F), which provides that the Commission "shall disallow" recovery of fuel costs that are the "result of . . . any decision of the utility resulting in unreasonable fuel costs."[6]

SCE&G nonetheless argues that the Commission properly saddled intervenors with the

---

reasonable, and appropriate rate."). *See* Opening Brief at 16 (explaining that while not required under the law, intervenors did provide viable alternatives).

[4] The Commission, in its Order denying petitions for rehearing in this case, acknowledged SCE&G's responsibility as the applicant seeking to substantially decrease the avoided cost rates it offers to third party power generators in this case. The Order stated that "the burden of proof always resides, as it must, with SCE&G." (R. p. 190; Order No. 2018-708, p. 2). Despite this recognition, the Commission still improperly shifted the burden when it required alternatives as a prerequisite for rejecting SCE&G's flawed avoided cost proposal.

[5] SCE&G's attempt to avoid its statutory burden by claiming that avoided cost rates are not "demanded or received" by SCE&G, but instead paid by SCE&G to qualifying facilities, SCE&G Response Brief at p. 15 n.12, is off the mark. The statute encompasses all rates "made" by SCE&G. S.C. Code Ann. § 58-27-810. "Made" means "put together of various ingredients." *Made*, Merriam Webster Dictionary https://www.merriam-webster.com/dictionary/made (last visited Apr. 15, 2019). Avoided cost rates are made by SCE&G, which puts them together using energy and avoided capacity values, each derived from component assumptions and derived values.

[6] S.C. Code Ann. §§ 58-27-865(A)(1) and (A)(2)(c) identify PURPA avoided costs as fuel costs. SCE&G ignores the statute's requirement that fuel costs be disallowed where a "decision of the utility result[s] in *unreasonable* fuel costs" by implying that errors in minimizing fuel cost rates are harmless. They are not harmless: PURPA requires *just, reasonable, and non-discriminatory* prices to facilitate independently produced power and competition, which will in turn "minimize the total cost of providing service." S.C. Code Ann. § 58-27-865(F); *see supra* at pp. 1-2.

burden to affirmatively present and prove alternative Company rates before the Commission could reject the Company's proposed rates however flawed those may be. SCE&G's theory is foreclosed by this Court's decision in *Hamm v. South Carolina Public Service Commission*, 309 S.C. 282, 422 S.E.2d 110 (1992) ("*Hamm*"), which held that once intervening parties or the Commission raise a "specter of imprudence" to rebut the initial presumption that the utility acted prudently, the utility must further demonstrate its claims. 309 S.C. at 286, 422 S.E.2d at 112. Under *Hamm*, "the ultimate burden of showing every reasonable effort to minimize fuel costs remains on the utility." *Hamm*, 309 S.C. 282, 286–87, 422 S.E.2d 110, 112–13 (quoting *Hamm v. South Carolina Pub. Serv. Comm'n and Carolina Power & Light Co.*, 291 S.C. 119, 352 S.E.2d 476 (1987) ("*Hamm 1987*")).

SCE&G tries to marginalize *Hamm* as narrowly concerning a utility's past expenses for which recovery is sought in an electric utility fuel case, but the decision in fact embodies a widely recognized ratemaking principle that is grounded in South Carolina code[7] and has been recognized in proceedings "premised on the burden of proof resting with the utility." *In Re Utilities Servs. of S.C., Inc.*, Docket No. 2007-286-WS, Order No. 2009-353, 2009 WL 2987189 (S.C. Pub. Serv. Comm'n May 29, 2009) *reversed on other grounds*, *Utilities Servs. of S.C., Inc. v. S.C. Office of Regulatory Staff*, 392 S.C. 96, 708 S.E.2d 755 (2011). *In Re Utilities* concerned a water and wastewater utility's *general* rate case rate rather than a narrower fuel rider case. Both general rate cases and fuel cases may involve past utility expenditures, future projections, and numerous methodological issues and judgment calls by the utility. Nothing in *Hamm* or any other case law suggest that a utility's burden of proof pertains *only* to past utility-incurred costs, with all other parties being responsible to carry the burden on numerous other factors integral to

[7] *Hamm 1987* focused on the utility's requirement to "minimize fuel costs" under S.C. Code Ann. § 58-27-865(F), but that same code section requires that fuel costs be disallowed where a "decision of the utility result[s] in unreasonable fuel costs," as here.

the rates developed and proposed by the utility. Such a reading would turn much of public utility practice on its head.

SCE&G also attempts to avoid *Hamm* in the avoided cost rate context because it is "an extremely difficult exercise" to "forecast[] future occurrences" to set avoided cost rates. SCE&G Response at 15 (internal citation omitted). But *Hamm* nowhere limits itself based on the difficulty of the ratemaking exercise at hand—ratemaking is often complex and difficult—and constraining its holding to only prior costs would undermine the principle addressed in its ruling: that the *utility* must reasonably prove the reasonableness and evidentiary basis for its rates, whether that basis is a prior expenditure, a methodological approach, or a projection. Indeed, annual fuel adjustment cases include *projected* fuel costs.[8] That a tariff includes *some* forward-looking elements hardly frees SCE&G from the primary burden of proving that its own proposals are reasonable; if anything, it should make SCE&G's burden heavier since SCE&G has superior access to information concerning its own generation system and carries a legal obligation under PURPA to purchase QF power through avoided cost rates. 16 U.S.C. § 824a-3 (requiring electric utilities to purchase energy and capacity from QFs); S.C. Code Ann. § 58-27-865 (requiring utility estimates of fuel costs for the next twelve months). Keeping the burden with the utility is especially important here, where SCE&G's reliance on an opaque methodology made it impossible for intervenors to run SCE&G's "black box" model and present alternative values at the same level of detail as the utility is capable of doing (even though it declined to do

[8] SCE&G relies on future projections for other aspects of its annual fuel cost proceedings not directly at issue in this appeal, such as natural gas forecasting, for which it relies on New York Mercantile Exchange ("NYMEX") pricing data to guide its decisions about whether to purchase natural gas on a monthly or seasonal basis. Direct Testimony of J. Darrin Kahl, Docket No. 2018-2-E, Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Co. (Feb. 23, 2018), https://dms.psc.sc.gov/Attachments/Matter/0607a117-2c2e-4715-b3b4-ae007bff0759 ("NYMEX is a financial market which captures real-time trading data *and information about the projected price of natural gas and other commodities for various times in the future*.") (emphasis added).

so in this case). Opening Brief at p. 17. Intervenors provided alternative calculations more than sufficient to raise the specter of imprudence by rebutting the presumption that the SCE&G's proposed avoided cost rates were just and reasonable[9] and showing that avoided capacity values are *not* zero.[10] Putting the burden on intervenors to do more—to always propose and substantiate their own fully-developed avoided cost methodology and values—undercuts the fundamental rubric established by *Hamm*, and does so in a docket with particularly problematic timelines and procedures for discovery. *Id.* at p. 17.[11]

SCE&G attempts to justify a departure from *Hamm* by citing cases that are inapposite. In *CarMax Auto Superstores West Coast, Inc. v. S.C. Dep't of Rev.*, 411 S.C. 79, 767 S.E.2d 195 (2014), the Court clarified the Department of Revenue's burden under a tax allocation statute that specifically gives the Department the authority to require a "reasonable" alternative method

---

[9] *See, e.g.*, Opening Brief at pp. 16-17 ("The Commission could have adopted any one of the [intervenors'] proposals. Or, *more properly*, it could have directed SCE&G to revise its proposed avoided cost rates to conform to the evidence showing that solar QFs have avoided capacity value—as SCE&G recognized in prior years.") (emphasis added).

[10] Intervenors were not, as SCE&G claims, "advocating for increased avoided energy and capacity costs to be paid by SCE&G," SCE&G Response Brief at p. 16, because SCE&G's newly proposed factor for recovery was not yet in effect. The Office of Regulatory Staff ("ORS") recommended, for example, that the "capacity value be set at 19.5% of the avoided cost per [kilowatt] from a 100 [megawatt] change" to SCE&G's resource plan, with further specifications about appropriate resource plan assumptions. (R. p. 1221, lines 15-23; p. 1242, lines 16-18; Tr. Vol. II, p. 591, ll. 15-23; p. 612, ll. 16-18). This was based on SCE&G's own analysis showing that solar contributes to summer peaks by reducing them approximately 19.5%. (R. p. 1221, lines 15-23; Tr. Vol. II, p. 591, ll. 15-23). ORS Witness Horii went on to provide two additional alternatives, one of which was to maintain the capacity values approved in 2017. (R. p. 1222, lines 6-11; p. 1242, line 19-p. 1243, line 2; Tr. Vol. II, p. 592, ll. 6-11; p. 612, l. 19 – p. 613, l. 2).

[11] Intervenors requested that SCE&G run its model with alternative inputs or methodological changes not just "after the hearing" as the Company claims, SCE&G's Response Brief at p. 26, n.18, but before and during it; SCE&G refused and the Commission did not compel them to respond. Opening Brief at p. 18, n.17. SCE&G's assertion that the Conservation Groups did not adequately preserve discovery and the procedural schedule for review, SCE&G Response Brief at pp. 45-48, is misleading. We did not request reversal of the discovery and timing orders below, but note them so the Court understands that shifting the burden of proof from the utility to intervenors in fuel cost dockets would raise multiple procedural and practical challenges.

of measuring a taxpayer's income in South Carolina when the statutory formula does not "fairly represent the taxpayer's business activity within the State." *Id.*, 411 S.C. 79, 86-87, 767 S.E.2d 195, 198-99 (quoting S.C. Code Ann. § 12-6-2320(A)).[12] The Court did not—as SCE&G suggests—adopt a general rule that intervenors in administrative proceedings must assert alternatives and carry a burden of persuasion that those alternatives are reasonable in order to successfully challenge an applicant's proposal.

Similarly, *August Kohn & Co. v. South Carolina Public Service Commission*, 281 S.C. 28, 30, 313 S.E.2d 630, 631 (1984), concerns a separate rule governing water service utility law. In that case, this Court addressed the burden of proof required to demonstrate that circumstances warrant a departure from the general rule that a utility should charge all customers a uniform rate to construct a needed water treatment plant expansion, without regard to whether the expansion will directly serve every customer charged. This Court never indicated that the *Hamm* burden-shifting scheme was inapplicable, or that intervenors must put forward an alternative to a proposed rate to challenge its reasonableness.

Finally, SCE&G's discussion of *South Carolina Cable Television Association v. Southern Bell Telephone & Telegraph Co.*, 308 S.C. 216, 221-22, 417 S.E.2d 586, 589 (1992), is misleading. The opinion does not endorse the notion of the Commission *requiring* intervenors to provide an alternative and carry a burden of persuasion in order to challenge a utility's proposal. Instead, the Court affirmed the Commission's decision to reject an expert's testimony when he did not provide enough information to support his critiques of the utility's studies and

[12] The relevant portion of S.C. Code Ann. § 12-6-2320(A) reads: "If the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for, *or the department may require*, in respect to all or any part of the taxpayer's business activity, *if reasonable*: . . . (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income." (emphasis added).

demonstrated his unfamiliarity with prior Commission decisions.[13]

In the instant case, by contrast, Intervenors submitted well-supported testimony by multiple witnesses showing that SCE&G's shift in seasonal peaks was unjustified and its elimination of avoided capacity rates was an arbitrary change from past practice. *See* Opening Brief at pp. 13-14 (providing further explanation and citations to the record). SCE&G's changes were undermined by its own witness testimony and resource plan that showed solar QFs have capacity value in summer. *Id.* The Commission did not reject this testimony as unfounded as it had done in *Cable Television*; instead it simply disregarded it by deploying an erroneous burden of persuasion. That requires reversal and remand.

II. Intervenors Provided More Than Sufficient Evidence To Raise the Specter of Imprudence.

SCE&G contends that even if *Hamm* applies and intervenors needed only raise the specter of imprudence, they failed to do so. SCE&G Response Brief at pp. 29-34. SCE&G is wrong. The Conservation Groups, Solar Business Alliance, and Office of Regulatory Staff presented nearly 100 pages of expert testimony specifically critiquing SCE&G's elimination of avoided capacity rates. (R. pp. 1015-22; pp. 1024-31; pp. 1046-56; pp. 1208-22; pp 1229- 43; pp. 1285-89; pp. 1388-407; pp. 1430-44; pp. 1457-59; Tr. Vol I, pp. 385-392, 394-401, 416-426; Tr. Vol. II, pp. 578-592, 599-613, 655-659, 758-777, 800-814, 827-829). This evidence included analyses and studies that demonstrated that SCE&G's avoided capacity rate was inaccurate. (R. p. 1212, lines 4-13; p. 1215, line 1-p. 1220, line 4; p. 1232, line 20-p. 1233, line 18; p. 1237, line 10-p. 1242, line 11; p. 1398, line 13-p. 1405, line 12; Tr. Vol II, pp. 582 (Witness Horii

[13] The Court explained that the Commission was unpersuaded by the witness's testimony because: "[h]e had conducted no studies . . . ; he was unaware of [the Commission's] prior decisions adopting life cycle and Fisher–Pry analyses . . . ; he asserted only *possible* inaccuracies in Southern Bell's studies as he could not point out specific errors, only *possible* alleged errors in judgment." *Id.* (emphasis in original).

estimation of SCE&G's winter demand-side risk using SCE&G's data), 585-590 (Witness Horii estimation of variability using a corrected version of SCE&G's regression data set), 602-603 (Witness Horii estimation of demand side risk.), 607-612 (Witness Horii Integrated Resource Plan-based reconstruction calculations), 768-775 (Witness Johnson estimation of benchmark avoided capacity cost)).[14] Courts have previously acknowledged that such analyses are sufficient to raise the specter of imprudence if the rate requested would have been different had the utility corrected the errors pointed out by intervenors. *See, e.g., New York Tel. Co. v. Pub. Serv. Comm'n*, 190 A.D.2d 217, 220–21, 597 N.Y.S.2d 760, 761–62 (1993) (specter raised where Commission staff—equivalent to ORS here—presented studies indicating that the utility would have significantly reduced costs had it undertaken a plant rehabilitation program).

Intervenors demonstrated several major flaws. First, expert testimony showed the lack of any basis for SCE&G's dramatic, unprecedented, and counterintuitive $0.00 avoided capacity value proposal. *See, e.g.*, (R. p. 1025, lines 1-4; p. 1208, lines 6-7; p. 1246, lines 12-22; p. 1283-88; Tr. Vol. I, p. 395 (Witness Glick Direct Testimony – "The Company cites its Solar Capacity Benefits Study to support this [zero] value. However the study does not provide an explanation as to how exactly SCE&G calculated the value of zero or what methodology was used,"), Tr. Vol. II, p. 578 (Witness Horii Testimony – "SCE&G has implemented a dramatic change in approach by not providing any avoided capacity cost calculations in this proceeding."); Tr. Vol. II, p. 616 (Witness Horii noting that he expected avoided capacity values to increase rather than be dropped to zero following the abandonment of the V.C. Summer nuclear plant); Tr. Vol. II, p.

[14] SCE&G asserts throughout its brief that it has experienced a dramatic increase in solar power in recent years, with 875 megawatts already under contract and this impacts its decision to eliminate capacity payments for solar QFs. But this argument is a red herring. As addressed in surrebuttal testimony, the amount of solar coming online is an "irrelevant" data point, and the Company failed to demonstrate that solar "provides no capacity value." *See* Opening Brief at p. 15.

653-658 (Witness Johnson also noting that he expected avoided capacity values to increase following the abandonment)); *see supra* n.10 (multiple witnesses submitted evidence that the avoided capacity value was not zero).

Second, expert witnesses showed that SCE&G's proposed winter reserve margin was excessively high, which in turn undervalued solar power's capacity contributions. The 21% winter reserve margin clearly exceeded the 12% to 17% range of winter reserve margins from peer utilities and the underlying report relied on by the Company was severely flawed in multiple ways. Opening Brief at pp. 27-28; (R. p. 1218, line 10-p.1220, line 4; p. 1237, line 5-p. 1242, line 11; Tr. Vol. II, p. 588, l. 10 – p. 590, l. 4; p. 607, l. 5 – p. 612, l. 11 (describing how the reserve margin threshold should be applied to average annual peaks rather than maximum annual peaks); R. p. 1020, lines 10-11; Tr. Vol I, p. 390, ll. 10-11 (pointing out that the Company considered only the relationship between load and weather, rather than a more comprehensive approach used by other utilities that also balanced reliability and customer costs); R. p. 1019, line 8-p. 1021, line 25; p. 1234, line 19-p. 1235, line 5; p. 1248, line 13-p. 1249, line 24; Tr. Vol. II, p. 389, l. 8 – p. 391, l. 25; p. 604, l. 19 – p. 605, l. 5; p. 618, l. 13 – p. 619, l. 24 (providing the range of winter reserve margins used by comparable peer utilities)). Dissenting Commissioner Fleming reiterated the concerns raised by intervenors in her dissent: "there are errors in SCE&G's Reserve Margin calculations," and its reserve margin "seems excessive" given the evidence presented. (R. p. 188; Order No. 2018-322(A), p. 51).

Third, experts testified that SCE&G's claim that it needed more capacity in the winter than in the summer was unjustified and inconsistent with the Company's previous filings. Opening Brief at pp. 6, 14 n.13, 23-26. Dissenting Commissioner Fleming agreed with this assessment. (R. p. 188; Order No. 2018-322(A), p. 51). Together, SCE&G's assertions about its

reserve margin and new winter peak resulted in the significant undervaluation of solar power's capacity contributions. *See* Opening Brief at pp. 13-14, 35-36 (explaining that these and other changes from SCE&G's past practice that experts criticized *all* arbitrarily minimized solar QFs' capacity valuations).

Fourth, the intervenors' experts testified that SCE&G's premise that solar QFs can be compensated for avoided capacity value only if they help meet peak needs in both summer *and* winter was unreasonable. Previously, when SCE&G said it needed more capacity in the summer than the winter, the Company compensated independent power producers using an 80% summer and 20% winter split in capacity values. In other words, it had a payment structure that would have compensated QFs even if they operated only in the winter. Multiple expert witnesses testified that SCE&G's decision to completely eliminate capacity payments for solar QFs—rather than switch to a 20% summer and 80% winter split now that the Company supposedly needs more capacity in the winter than the summer—was arbitrary and unjustified. *Id.* at pp. 23-25.

Indeed, as anyone who has lived through multiple South Carolina summers might appreciate, the evidence (including the Company's own testimony) showed that solar power on summer afternoons impacts peak demand on all days in June and July, and most days in an additional three months. Opening Brief at pp. 25-26. SCE&G's central witness further admitted that the Company could use different resources for summer and winter peak capacity, such as solar to meet summer peaks and energy efficiency or demand response to meet winter ones. *Id.* at p. 26.[15] Given the many hours of peak generation provided by solar in a typical year, there

[15] It is worth noting here, in response to SCE&G's meritless argument on pages 41-42 of its brief, that intervenor experts properly emphasized energy efficiency and demand side management programs in this proceeding. Because the Company claimed that its proposal to eliminate avoided capacity payments was necessary as a result of a "newly developed winter

was no basis for zeroing out solar's capacity value because other sources might meet a much fewer number of peak hours in the winter. The evidence showed that the Company's rates failing to value solar QFs for their summer capacity contributions were unreasonable.

Taken together, this evidence was more than sufficient to raise the specter that SCE&G's proposed rates were deeply flawed and thus imprudent. Under *Hamm*, the Commission was bound to shift the burden back to the Company and its failure to do so was reversible error.

III. The Commission's Decision Was Not Supported By Substantial Evidence.

Regardless of whether *Hamm* applies, the Commission was required to support its decision with substantial evidence. The Commission failed to do this.

A. The Commission's Approval of SCE&G's Avoided Capacity Rate Was Not Supported By Substantial Evidence, But Was Instead Based on an Illusory Rationale.

Commission decisions must be supported by substantial evidence. *See* S.C. Code Ann. § 1-23-380(5)(e) (allowing reversal or modification of administrative decisions that are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record");

---

peak," it was directly relevant and appropriate for intervenors to recommend a greater emphasis on opportunities for reducing rare winter peaking events. (R. p. 183; Order No. 2018-322(A), p. 46). Company witness Lynch noted that the newly developed winter peak is closely tied with inefficient energy usage during cold periods, (R. p. 868; Tr. Vol. I, p. 238), and the Commission, despite its other errors, correctly recognized this link and demanded that SCE&G "investigate and implement" economic demand side management and energy efficiency programs that have the potential to decrease SCE&G's purported winter peak. (R. p. 183; Order No. 2018-322(A), p. 46). Given the Company's own insistence that inefficient energy use drives its winter peak, and FERC Order 69's requirement that utilities using the DRR method optimize their resource plans, discussed *infra* at pp. 17-18, it was incumbent upon SCE&G to consider whether investment in winter-peaking demand response programs could alleviate winter peaks, allowing SCE&G to meet remaining summer capacity needs with solar QFs rather than a natural gas plant. *See* (R. p. 1101, lines 11-19; Tr. Vol. II, p. 471 (SCE&G witness Lynch conceding that the natural gas plant planned for 2023 might be avoidable)). Finally, SCE&G's argument on this point is meritless because it is contradicted by the Company's own inclusion of two natural gas plants in its 2018 IRP that had not received Commission approvals. *Id.*; (R. p. 1556; p. 925, line 8-p. 926, line 16; Hearing Exhibit 5, JML-1; Tr. Vol. II, p. 295 l. 8 – p. 296, l. 16).

Porter v. S.C. Pub. Serv. Comm'n, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998) (reversing Commission decision that was not supported by substantial evidence); *Heater of Seabrook, Inc. v. Pub. Serv. Comm'n of S.C.*, 324 S.C. 56, 60-61, 478 S.E.2d 826, 828-29 (1996) (reversing Commission decision where rationale provided was "illusory").

As shown in our opening brief, the Commission's decision approving the zero avoided capacity rate violated the rule announced in *Seabrook* because it was based on an illusory rationale and not grounded in substantial evidence. SCE&G's attempt to distinguish *Seabrook* by stating that "the PSC's ruling there was grounded in a lack of substantial evidence to support the departure," SCE&G Response Brief at p. 38 n.26, only proves the point. Where the Commission relies on an illusory rationale, rather than substantial evidence in the record, it is subject to reversal by this Court.

That is exactly what happened here. Instead of grounding its decision with substantial evidence, the Commission here attempted to justify its decision by saying that no other party provided a "viable alternative." As explained above, that rationale is improper and illusory, and thus unlawfully relieves SCE&G of its burden to prove that its rates are just and reasonable. If the Commission, on its own investigation, or based on evidence presented by other parties—or members of the public for that matter—has sufficient information to question the reasonableness and lawfulness of the utility's proposed rates, the Commission has the authority to reject the rates, or require more justification, rationale, or revision from the incumbent utility. *See* Opening Brief at p. 22 (citing relevant cases); *see also Hilton Head Plantation Utilities, Inc. v. Pub. Serv. Comm'n of S.C.*, 312 S.C. 448, 451, 441 S.E.2d 321, 323 (1994) (denying portion of rate increase where non-party protestant raised questions about a utility's transactions with its corporate parent: "[I]f there is an absence of data and information from which the reasonableness

and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained by the Commission, allowance is properly refused."). It is an absurd result to say the Commission is stripped of the ability and authority to reject a monopoly utility's proposed rates unless it is presented with alternative rates by intervenors. Reliance on an illusory rationale such as this one, rather than substantial evidence, is grounds for reversal, as set forth in *Seabrook*.

B. Conservation Groups Do Not Ask the Court to Serve as Trier of Fact, But Rather to Reverse and Remand Commission Action That Was Not Supported By Substantial Evidence and Lacked Necessary Findings of Fact.

Setting aside the Commission's reliance on an illusory rationale for accepting erroneous avoided capacity rates for solar, it also failed to analyze or evaluate in any meaningful way overwhelming evidence showing that SCE&G's zeroing out avoided capacity rates was fundamentally unsound. That too was reversible error.

SCE&G complains that Conservation Groups ask this Court to stand in for the Commission as trier of fact, SCE&G Response Brief at pp. 30-31. To the contrary, we seek to have the Commission meet its legal obligations and to make decisions based on the evidence before it. Where, as here, the Commission's decision is unsupported by substantial evidence, it must be reversed. S.C. Code Ann. § 1-23-380(5).

Importantly, "th[e] deferential standard of review [of agency decisions] does not mean . . . that the Court will accept an administrative agency's decision at face value without requiring the agency to explain its reasoning." *Porter*, 333 S.C. at 21, 507 S.E.2d at 332. In *Porter*, this Court reversed and remanded a Commission order approving a utility's proposed rate of return because the Commission made "no findings of fact or offered any explanation of its conclusion," it "simply recite[d] the economists' conflicting testimony, mention[ed] established legal principles applied in rate cases, and then conclude[d] 12.75 percent is a proper rate of

return on common equity." *Id.*, 333 S.C. at 21-22, 507 S.E.2d at 333. The Commission in this case likewise failed to explain its reasoning for accepting SCE&G's zeroing out of avoided capacity rates. Opening Brief at pp. 23-29; *see also* Commission Order 2018-322(A) at pp. 15-16. Instead it summarized the direct and rebuttal testimony of the witnesses but completely ignored intervenors' surrebuttal testimony, and then adopted the language of the Company's witness almost verbatim without explaining its reasoning or why it was unpersuaded by intervenor testimony. Opening Brief at pp. 23-29. The closest that the Commission came to grappling with the conflicting testimony was to say that the witnesses were not that far apart in their reserve margin estimates. Opening Brief at p. 29. Even that claim is belied by the record and called out in dissent. *Id.* The Commission's gross failure to include its reasoning is grounds for reversal and remand under *Porter.*

Even if this Court were to look beyond the Commission's Order into the whole record as SCE&G requests, it would still find a lack of substantial evidence to support the Commission's ruling. The record is full of testimony pointing to the holes in SCE&G's proposal and its anti-competitive effect against solar QFs in contravention of PURPA. *See* Opening Brief at pp. 13-14, 23-30 (providing specific citations to the record and relevant testimony and describing the lack of substantial evidence to support Commission's ruling).

IV. The Commission's Decision to Approve SCE&G's Proposed Zero Avoided Capacity Value Violated Federal Law.

Federal law requires each utility to "purchase . . . any energy and capacity which is made available from a qualifying facility," 18 C.F.R. § 292.303(a), at rates that reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from those sources, 18 C.F.R. § 292.101(b)(6). Congress enacted PURPA partly to address concern that some utilities would be reluctant to interconnect with nonutility generators of electricity out of fear that doing

so would threaten the utility's retail monopoly. *See* Steven R. Miles, *Full-Avoided Cost Pricing Under the Public Utility Regulatory Policies Act: "Just and Reasonable" to Electric Consumers?*, 69 Cornell L. Rev. 1267, 1268 n.11 (1984) (quoting and describing statements during PURPA hearings regarding utilities' reluctance to interconnect independent power producers). This reluctance highlights the importance of proper implementation of PURPA by the Commission.

SCE&G's brief conveniently ignores the Commission's failure to include any findings of fact or reasoning regarding the violations of federal law described in our opening brief. *See* SCE&G Response Brief at pp. 43-45. The intervening parties repeatedly briefed and requested a Commission ruling on federal law issues. Opening Brief at p. 37 (citing to briefing and requests in the record). As discussed *supra* at pp. 13, 15-16, the Commission must explain its reasoning and provide sufficient analysis so as to allow this court to review its findings and conclusions. *Porter*, 333 S.C. at 21, 507 S.E.2d at 332; *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 15 (1986). The failure of the Commission to issue any findings of fact or reasoning on these federal law issues cannot be salvaged by SCE&G's briefing, and constitutes reversible error.

SCE&G's attempts to rectify the Commission's omissions are unavailing. First, regarding optimization modeling, Federal Energy Regulatory Commission guidance in Order 69 is clear: when a utility like SCE&G uses the difference in revenue recovery approach in calculating PURPA avoided cost rates, it must use "an optimal capacity expansion plan," defined as one that "will meet a utility's projected load requirements *at the lowest total cost.*" Small Power Production & Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 45 Fed. Reg. 12,214, 12,216 n.6 (Feb. 25, 1980)

(to be codified at 18 C.F.R. pt. 292) (emphasis added); *see also* Opening Brief at p. 32.[16] It is undisputed that SCE&G uses the DRR method yet did not use optimization software, despite the broad availability of such programs. Opening Brief at p. 40; (R. p. 1109, line 21-p. 1110, line 10; Tr. Vol. II, p. 479, l. 21 – p. 480, 1. 10). The Company argues that its spreadsheet approach was sufficient to optimize and identify a "least cost plan," but artificially limiting the potential plans to just two gas plant options does not suffice to replace models that consider thousands of potential capacity resource combinations and then optimize for the least cost result.[17] Even in the rare departure from standard optimization models, the range of scenarios considered must be greater than two. *See* Opening Brief at p. 40 n.30 (citing rare case that allowed under limited circumstances a model that considered *twenty-one* scenario runs of different combinations and requiring utility to use optimization model going forward). Tellingly, the Company fails to distinguish this or any of the other cases cited in our opening brief on this optimization issue. *Compare* Opening Brief at pp. 37-41, and footnotes 29-31 (citing relevant case law), *with* SCE&G Response Brief at pp. 44-45 (failing to discuss or distinguish any of these cases cited in Opening Brief).[18] And the Company does not deny that its key witness on this issue *admitted* that the Company does not use optimization software and sought to justify its plan as "close to

[16] SCE&G references descriptions of its capacity expansion plan as setting forth a program to meet demand and energy forecasts in "an economic and reliable manner," SCE&G Response Brief at p. 44, but notably, not in a "least cost" manner.

[17] The PROSYM dispatch simulation model software SCE&G identifies in its Response at p. 45 is one that simulates daily operation of the power system to select an option within the limitations of the pre-populated resource options already handpicked by the utility. It is not the same thing as an optimization model. (R. p. 1108, line 12-p. 1110, line 15; p. 1112, line 25-p. 1114, line 1; Tr. Vol. II, p. 478, l. 12 – p. 480, l. 15; p. 482, l. 25 – p. 484, l. 1).

[18] The only cases cited in Section IV.D of SCE&G's Response Brief are those standing for the proposition that avoided capacity rates must have a "clear relationship" with the utility's demand for capacity, which appellants agree with and seek to have the Commission comply with on remand of this case. SCE&G Response Brief at pp. 43-44 n. 29; *see* Opening Brief at p. 31 ("The Commission's elimination of avoided capacity payments *without a clear relationship* to SCE&G's actual demand for capacity—and in fact, contrary to the overwhelming weight of the evidence in the record—violates federal law.").

optimal." (R. p. 1110, line 10; Tr. Vol. II, p. 480, l. 10). The Commission's Order, which failed to address this issue at all, violated federal law.

Second, the Commission failed to address the PURPA regulations that require utilities to consider the coincidence of a qualifying facility's power output with *system daily and seasonal peak periods*. 18 C.F.R. § 292.304(e)(2). In the face of overwhelming evidence that solar QFs can and do help reduce the system's peaks in the summer months, the Commission still allowed SCE&G to zero out capacity rates even in *those* months. *See* Opening Brief at pp. 33-34 (citing relevant testimony from the experts of the Solar Business Alliance, Office of Regulatory Staff, and SCE&G).

Finally, both the Commission and SCE&G failed to respond to Appellants' argument that the Commission's Order unlawfully allowed SCE&G to treat QFs in a discriminatory manner. PURPA requires that avoided cost rates paid for independently produced renewable energy "shall not discriminate against QFs." 16 U.S.C. § 824a-3(b); 18 C.F.R. § 292.304(a)(1). Yet both individually and in the aggregate, SCE&G's actions in this proceeding served to discriminate against QFs by undervaluing the costs that solar QFs in particular allow the utility and its ratepayers to avoid. Opening Brief at pp. 34-37.[19] In turn, the Commission Order approving these actions unlawfully reduced the compensatory rates offered to these QFs and stifled the competition otherwise authorized by PURPA. This is the kind of discriminatory behavior Congress acknowledged was possible and sought to specifically guard against in its passage of PURPA.

[19] "When every major change SCE&G made to the studies and assumptions underlying its proposal to zero out avoided capacity payments was criticized by intervening parties as unsupported ... and every major change resulted in the deprivation of capacity value for solar QFs, the Commission was required to investigate the issue and ensure compliance with PURPA." Opening Brief at p. 36.

V. Conservation Groups Sufficiently Preserved Commission's Findings of Fact for Appellate Review.

The Conservation Groups sufficiently preserved their argument that the Commission Order approving SCE&G's avoided costs did not contain sufficient findings of fact. In their petition for rehearing, the Conservation Groups specifically noted the requirements that the Commission's findings must be adequately detailed and supported and that a recital of conflicting testimony followed by a general conclusion is insufficient to facilitate appellate review. Opening Brief pp. 9-10. And the Groups discussed every issue raised in the present appeal. For example, two issues that the Conservation Groups discussed at length in their Opening Brief as insufficiently supported by findings of fact—that a resource must provide compensation in both the summer and winter to have capacity value, and that SCE&G now needed a 21% winter reserve margin—were both discussed at length in their Petition for Reconsideration. *See* (R. pp. 512-15; Petition for Rehearing, pp. 39-42 (addressing the proposed winter reserve margin)); (R. p. 504; Petition for Rehearing, p. 31 (noting that the Commission's finding that SCE&G is unable to avoid any future capacity needs from solar because of generation needs in the winter, is "not grounded in fact.")). SCE&G's suggestion that the Conservation Groups had to do more, by repeatedly stating that the Commission's factual findings were insufficient for each argument, is not supported by the law. *See State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001) (holding argument was preserved even though the defendant did not use the exact name of a legal doctrine, where the ground for the motion was apparent from a review of the record).

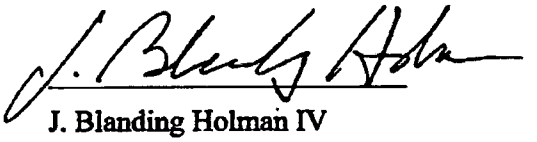
CONCLUSION

For the reasons set forth above, Appellant Conservation Groups respectfully request that the Court reverse the Commission's approval of SCE&G's avoided cost rates, specifically the

elimination of avoided capacity rates, and remand this matter to the Commission.

[Signature Page Follows]

Respectfully submitted this the 11th day of June, 2019.



J. Blanding Holman IV
S.C. Bar No. 72260
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843)720-5270
bholman@selcsc.org

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2018-001165 and 2018-002117

Commission Docket No. 2018-2-E

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, — Appellants,

v.

South Carolina Electric & Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, LLC, Southern Current, LLC and South Carolina Office of Regulatory Staff, — Respondents;

and

South Carolina Solar Business Alliance, LLC, — Appellant,

v.

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, South Carolina Electric and Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, Southern Current, LLC, and South Carolina Office of Regulatory Staff,

Of whom South Carolina Electric & Gas and South Carolina Office of Regulatory Staff, are — Respondents.

RULE 211(b) CERTIFICATE

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

June 11, 2019

J. Blanding Holman IV
S.C. Bar No. 72260
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843)720-5270
bholman@selcsc.org

Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE PUBLIC SERVICE COMMISSION

Appellate Case No. 2018-001165 and 2018-002117

Commission Docket No. 2018-2-E

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, Appellants,

v.

South Carolina Electric & Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, South Carolina Solar Business Alliance, LLC, Southern Current, LLC and South Carolina Office of Regulatory Staff, Respondents;

and

South Carolina Solar Business Alliance, LLC, Appellant,

v.

South Carolina Coastal Conservation League and Southern Alliance for Clean Energy, South Carolina Electric and Gas, CMC Steel South Carolina, South Carolina Energy Users Committee, Southern Current, LLC, and South Carolina Office of Regulatory Staff,

Of whom South Carolina Electric & Gas and South Carolina Office of Regulatory Staff, are Respondents.

PROOF OF SERVICE

I hereby certify that the following persons have been served with Appellant's Final Brief and Reply Brief by depositing them in the United States Mail, postage prepaid, on June 11, 2019, at the addresses set forth below.

Richard L. Whitt, Esq.
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29201
(803) 251-7442

K. Chad Burgess, Esq.
Matthew Gissendanner, Esq.
South Carolina Electric & Gas Company
220 Operation Way - MC C222
Cayce, SC 29033-3701
(803) 217-8141

Alexander G. Shissias, Esq.
The Shissias Law Firm, LLC
1727 Hampton Street
Columbia, SC 29201
(803) 540-3090

Scott Elliott, Esq.
Elliott & Elliott, P.A.
1508 Lady Street
Columbia, SC 29201
(803) 771-0555

Benjamin P. Mustian, Esq.
John Marion S. Hoefer, Esq.
Mitchell Willoughby, Esq.
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
(803) 252-3300

Andrew M. Bateman, Esq.
Jenny R. Pittman, Esq.
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201
(803) 737-8440

Timothy F. Rogers, Esq.
Austin and Rogers, P.A.
Post Office Box 11716
Columbia, SC 29201
(803) 712-9900

[SIGNATURE PAGE FOLLOWS]

J. Blanding Holman, IV
S.C. Bar No. 72260
Southern Environmental Law Center
463 King Street, Suite B
Charleston, SC 29403
Telephone: (843) 720-5270
bholman@selcsc.org

Attorney for Appellant